

In the Court of the II Additional District Munsif, Nagercoil

Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,

II Additional District Munsif, Nagercoil.

Wednesday, on this the 18th day of September 2024

I.A. No. 3 of 2020

in

O.S. No.38 of 2020

CNR No.TNKK04-000075-2020

Murugan

.... Petitioner/Plaintiff

-vs-

1. The Assistant Engineer Water Irrigation
Section Mylaudy.

2. The Tahsildar, Agasteeswaram Taluk,

3. The District Collector,
Kanyakumari District.

....Respondents/Defendants

This Petition came up before this Court on 16.08.2024, in the presence of Thiru.R.Raja Ganapathy Advocate for the Petitioner/Plaintiff and Mr. C. Johnson, Pleader doing Government Work for the Respondents 1 to 3 and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. The Petitioner had filed under Order XXXIX Rule 1 and 2 and Section 151 Code of Civil Procedure, seeking an order of Temporary Injunction restraining the Defendants from disturbing the Plaintiff's peaceful possession and enjoyment of the

Plaint Schedule Property in any manner and not to demolish the house bearing No.A/1 of Marungoor Town Panchayat, within the Plaint Schedule Property. in any manner, whatsoever till the disposal of the suit.

2. The Petitioner had stated that he had filed the above suit for Permanent Injunction, stating that he is the owner having valid, Title and Possession over four cents of Patta land in Resurvey No. 305/33, of Nalloor Village. The Patta number is 2643. The Plaintiff purchased two cents out of the Plaint Schedule property under Sale Deed bearing Doc.No.789 of 1983 and another two cents of the Plaint Schedule property under Sale Deed bearing Doc.No. 926 of 1983. Both the properties lying as a single plot.

3. The Plaintiff got his name mutated in the revenue records and paying tax in respect of the Plaint Schedule Property. During the year 1984, the Plaintiff, by expending more than Rs.5,00,000/- (Rupees Five Lakhs only) and put up house bearing Door No. A/1 Marungur Town Panchayat and enjoying the Plaint Schedule Property without interruption of anyone. On 30.09.2019, the 3rd Defendant sent notice stating that the Plaintiff had encroached an extent of 0.02.0 Ares, in Resurvey number 579/1 and that property belongs to the water irrigation. It is also stated that the Plaintiff had encroached the said property and built the building therein.

4. The 3rd Defendant marked the encroached portion of the Plaint Schedule property and instructed the Plaintiff to demolish the marked portion, within the stipulated time. After receipt of notice, the Plaintiff raised objection in person. The 3rd Defendant, without considering the same, took steps to demolish the portion of the

Plaint Schedule Property. The Plaintiffs do not own any property and Resurvey number 579/1, the Plaintiff owns the Plaint Schedule property. The Plaintiff has annexed any Poramboku land, with the Plaint Schedule property. On 20.02.2020, the Petitioner submitted representation to the 2nd Defendant. Since no action was taken, on 21.02.2020, the Plaintiff issued notice under Section 80 Code of Civil Procedure. Since the buildings, sought to be demolished, is the house, in the Plaintiffs Patta land. If such demolition activities is carried on, the Plaintiff will be put to irreparable loss and great hardship, which cannot be compensated in terms of money. Hence the Plaintiff had come by way of the above suit as well as Interim Application.

5. The Respondent had filed counter, stating that the suit as well as the above I.A. is not maintainable. The description of the suit property is incorrect and misleading the property in Resurvey No. 579/1, Nalloor Village is a water course puramboke, classified as vaikal Puramboke. The same absolutely belongs to the state and the same is maintained by 1st Defendant. On 06.09.2019, the Firka Surveyor of Agasteeswaram Taluk, the Revenue Inspector, Sucindrum, Public Works Department officials, Water Resources Organization officials, measured the property and fixed the encroachment. It was found that the Plaintiff and one Prema wife of John Bosco of North Rajavoor, have encroached upon the above said water course puramboke. The encroachments are fixed and the 2nd Defendant had submitted Report accordingly.

6. Thereafter action has been taken by the authorities concerned to evict the encroachers from the water course pruamboke under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007. Notice has been issued to the Plaintiff

and another as per the above suit. The said Prema herself voluntarily removed the encroachment, made in the water course. However the Plaintiff having received the notice had filed the above suit. The suit is barred under Tamil Nadu Land Encroachment Act. Under Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007. The Plaintiff's contention that he is in possession of land comprised in Resurvey No.305/53 is not correct. After encroaching the water course Purambke, the Plaintiff had filed the above suit vexatiously. The Plaintiffs claim as to issuance of notice, is against facts and incorrect. Notice was issued by the Respondent, to remove encroachment in Resurvey No. 579/1.

7. The Respondents have duty to protect the puramboke properties, especially water course puramboke. The Respondents are discharging their duties in accordance with law. The above application has been filed by suppressing material facts. The Petitioner has no prima facie case, balance of convenience, if injunction is granted. The Respondents and the public in large will be put to very great hardship, loss and inconvenience. Hence the Respondents prayed for dismissal of the above Petition.

8. The point for consideration is whether the above Petition has to be allowed or not ?

9. The dispute in the above suit is whether the Petitioner had encroached the water course in Resurvey number 579/1, Nalloor Village or not. The same has to be adjudicated only in the suit. In so far as the above I.A is concerned, the Petitioner had sought Interim injunction, in respect of the Petition Schedule property, being comprised in Survey number 1803, Resurvey No. 305/33. On the other hand, the

Respondents have contented apart from the Petition Schedule Property, the Petitioner had encroached the water course in Resurvey No.579/1. Even according to the Petitioner, the officials of the Respondents have marked a portion, in the structure, put up, by the Petitioner, as if the same, lies in Resurvey number 579/1.

10. In view of such disputed facts, the Petitioner cannot be said to have made out a prima facie case. Further as contented by the Respondents, in case of water body encroachments, the Civil Courts are restrained from passing injunction against the Statutory actions, contemplated under Tamil Nadu Protection of Tanks and Eviction of Encroachments Act 2007. In view of the discussions made above, this Court is of the considered view that the Petitioner had made out prima facie case. Hence, this Court is of the considered view, that the Petitioner is not entitled for the Petition relief.

In the result, the above Petition is dismissed. No cost

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 18th day of September 2024.

sd/-

II Additional District Munsif
Nagercoil.

Petitioners side witness & Documents : Nil

Respondents side witness & Documents : Nil

sd/-

II Additional District Munsif
Nagercoil.

I.A. No. 3 of 2020 in
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Fair Order
Date: 18.09.2024.
II ADM Court, Nagercoil.

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Order Pronounced in Open Court

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II ADM